

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 3459

CARMEN GONZALEZ
27153 Lavender Street
Sun City, CA 92585

Original Pharmacy Technician Registration No.
TCH 36174

Respondent.

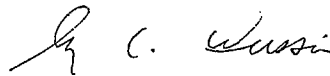
DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 18, 2010.

It is so ORDERED October 19, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
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8
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10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 3459

12 **CARMEN GONZALEZ**
13 **27153 Lavender Street**
14 **Sun City, CA 92585**

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Pharmacy Technician Registration No.**
16 **TCH 36174**

17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
20 proceeding that the following matters are true:

21 PARTIES

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
23 She brought this action solely in her official capacity and is represented in this matter by Edmund
24 G. Brown Jr., Attorney General of the State of California, and by Erin M. Sunseri, Deputy
25 Attorney General.

26 2. Carmen Gonzalez (Respondent) is representing herself in this proceeding and has
27 chosen not to exercise her right to be represented by counsel.

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ORDER

1
2 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 36174, issued
3 to Respondent Carmen Gonzalez is surrendered and accepted by the Board of Pharmacy.

4 14. The surrender of Respondent's Pharmacy Technician Registration and the acceptance
5 of the surrendered license by the Board shall constitute the imposition of discipline against
6 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
7 Respondent's license history with the Board.

8 15. Respondent shall lose all rights and privileges as a Pharmacy Technician in California
9 as of the effective date of the Board's Decision and Order.

10 16. Respondent shall cause to be delivered to the Board both her wall license certificate
11 and, if one was issued, pocket license on or before the effective date of the Decision and Order.

12 17. Respondent fully understands and agrees that if she ever files an application for
13 licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new
14 application for licensure. Respondent must comply with all the laws, regulations and procedures
15 for application for licensure in effect at the time the petition or application is filed, and all of the
16 charges and allegations contained in Accusation No. 3459 shall be deemed to be true, correct and
17 admitted by Respondent when the Board determines whether to grant or deny the petition or
18 application.

19 18. Should Respondent ever apply or reapply for a new license or certification, or petition
20 for reinstatement of a license, by any other health care licensing agency in the State of California,
21 all of the charges and allegations contained in Accusation No. 3459 shall be deemed to be true,
22 correct, and admitted by Respondent for the purpose of any Statement of Issues or any other
23 proceeding seeking to deny or restrict licensure.

24 19. Respondent shall not apply for any license, permit, or registration from the Board for
25 three (3) years from the effective date of this decision. Respondent stipulates that should she
26 apply for any license from the Board on or after the effective date of this decision, all allegations
27 set forth in Accusation No. 3459 shall be deemed to be true, correct and admitted by Respondent
28 when the Board determines whether to grant or deny the application. Respondent shall satisfy all

1 requirements applicable to that license as of the date the application is submitted to the board,
2 including, but not limited to certification by a nationally recognized body prior to the issuance of
3 a new license. Respondent is required to report this surrender as disciplinary action.

4 20. Respondent shall pay the Board its costs of investigation and enforcement in the
5 amount of \$3,672.50 prior to issuance of a new or reinstated license.

6 ACCEPTANCE

7 I have carefully read the Stipulated Surrender of License and Order. I understand the
8 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this
9 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
10 be bound by the Decision and Order of the Board of Pharmacy.

11
12 DATED: 6/17/10 Carmen Gonzalez
13 CARMEN GONZALEZ
14 Respondent

15 ENDORSEMENT

16 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
17 for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

18
19 Dated: 8/27/10 Respectfully submitted,
20 EDMUND G. BROWN JR.
21 Attorney General of California
22 JAMES M. LEDAKIS
23 Supervising Deputy Attorney General
24 Erin M. Susseri
25 ERIN M. SUSSERI
26 Deputy Attorney General
27 *Attorneys for Complainant*

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Exhibit A

Accusation No. 3459

1 EDMUND G. BROWN JR.
Attorney General of California
2 JAMES M. LEDAKIS
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13 **27153 Lavender Street**
14 **Sun City, CA 92585**

A C C U S A T I O N

15 **Pharmacy Technician Registration No.**
16 **TCH 36174**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about August 16, 2001, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 36174 to Carmen Gonzalez (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on January 31, 2011, unless renewed.

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JURISDICTION

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2 3. . . This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated.

9 5. Section 4300 of the Code states, in pertinent part:

10 (a) Every license issued may be suspended or revoked.

11 (b) The board shall discipline the holder of any license issued by the board, whose default
12 has been entered or whose case has been heard by the board and found guilty, by any of the
13 following methods:

14 (1) Suspending judgment.

15 (2) Placing him or her upon probation.

16 (3) Suspending his or her right to practice for a period not exceeding one year.

17 (4) Revoking his or her license.

18 (5) Taking any other action in relation to disciplining him or her as the board in its
19 discretion may deem proper.

20 (c) The board may refuse a license to any applicant guilty of unprofessional conduct.

21 6. Section 4301 of the Code states, in pertinent part:

22 The board shall take action against any holder of a license who is guilty of unprofessional
23 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
24 Unprofessional conduct shall include, but is not limited to, any of the following:

25

26 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
27 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
28 whether the act is a felony or misdemeanor or not.

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....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter....In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision....

....

(p) Actions or conduct that would have warranted denial of a license.

7. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

....

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

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1 8. Section 482 of the Code states:

2 Each board under the provisions of this code shall develop criteria to evaluate the
3 rehabilitation of a person when:

4 (a) Considering the denial of a license by the board under Section 480; or

5 (b) Considering suspension or revocation of a license under Section 490.

6 Each board shall take into account all competent evidence of rehabilitation furnished by the
7 applicant or licensee.

8 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
9 revoke a license on the ground that the licensee has been convicted of a crime substantially
10 related to the qualifications, functions, or duties of the business or profession for which the
11 license was issued.

12 10. Section 493 of the Code states:

13 Notwithstanding any other provision of law, in a proceeding conducted by a board within
14 the department pursuant to law to deny an application for a license or to suspend or revoke a
15 license or otherwise take disciplinary action against a person who holds a license, upon the
16 ground that the applicant or the licensee has been convicted of a crime substantially related to the
17 qualifications, functions, and duties of the licensee in question, the record of conviction of the
18 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
19 and the board may inquire into the circumstances surrounding the commission of the crime in
20 order to fix the degree of discipline or to determine if the conviction is substantially related to the
21 qualifications, functions, and duties of the licensee in question.

22 As used in this section, "license" includes "certificate," "permit," "authority," and
23 "registration."

24 11. Section 4313 of the Code states:

25 In determining whether to grant an application for licensure or whether to discipline or
26 reinstate a license, the board shall give consideration to evidence of rehabilitation. However,
27 public protection shall take priority over rehabilitation and, where evidence of rehabilitation and
28 public protection are in conflict, public protection shall take precedence.

1 REGULATIONS

2 12. California Code of Regulations, title 16, section 1770, states:

3 For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
5 crime or act shall be considered substantially related to the qualifications, functions or duties of a
6 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
7 licensee or registrant to perform the functions authorized by his license or registration in a manner
8 consistent with the public health, safety, or welfare.

9 COST RECOVERY

10 13. Section 125.3 of the Code provides, in pertinent part, that the
11 Board/Registrar/Director may request the administrative law judge to direct a licentiate found to
12 have committed a violation or violations of the licensing act to pay a sum not to exceed the
13 reasonable costs of the investigation and enforcement of the case.

14 FACTS

15 14. On or about February 29, 2008, in a criminal proceeding entitled *People v. Carmen*
16 *Gonzalez*, in the Superior Court of California, County of Riverside, Case No. SWF024701,
17 Respondent was convicted by her plea of guilty to violation of Penal Code section 503
18 (embezzlement), reduced to a misdemeanor pursuant to the plea agreement and pursuant to Penal
19 Code section 17(b).

20 15. Respondent was sentenced to three years of summary probation, 60 days in county
21 jail, payment of restitution to the victim, and fines in the amount of \$265.00.

22 16. The circumstances of the crime are that on or about January 22, 2008, while
23 Respondent was working as a Pharmacy Technician at Albertson's in Murrieta, an officer from
24 the Murrieta Police Department was dispatched to the store to investigate a report of
25 embezzlement from the Albertson's Loss Prevention. The officer spoke with the Loss Prevention
26 Agent (LPA). The LPA explained that Albertson's had a promotion in which a new pharmacy
27 customer could receive up to \$35.00 as a gift card for purchasing their prescriptions at
28 Albertson's. Customers could also receive a \$10.00 gift card for each fifth prescription presented.

1 The LPA said that Respondent had been employed by Albertson's since February 2007 as a
2 pharmacy technician. The LPA further stated that she had examined several transactions by
3 Respondent since December 2, 2007 in which Respondent generated gift cards for customers and
4 then failed to give them the gift cards. Respondent then spent the gift cards at Albertson's on
5 groceries.

6 17. The LPA was able to locate fourteen cards which were generated by Respondent and
7 then in turn were redeemed or used to purchase groceries at Albertson's by Respondent. The total
8 loss to Albertson's was \$500.00. The LPA viewed Respondent on video generating and then
9 using the gift cards. The LPA showed the officer the transactions she had retrieved and pointed
10 out the gift card number generated by Respondent, and then matched the gift card number with
11 the purchase of merchandise and groceries at Albertson's. The LPA was able to track
12 Respondent's use of the gift cards because Respondent also used her Albertson's customer card
13 number to receive additional savings, along with the gift card, to make the purchases. The LPA
14 stated that a total of \$1200.00 worth of gift cards were generated by Respondent, but only
15 \$500.00 was redeemed for merchandise and/or groceries.

16 18. The LPA provided the officer with transaction evidence of the embezzlement. The
17 LPA also stated that there was photographic evidence. The officer observed a transaction in
18 which Respondent swiped a card in the reader when no customer was present. The LPA had
19 contacted Respondent prior to the officer's arrival, and had interviewed her about the
20 transactions. Respondent admitted wrongdoing and wrote a statement further admitting to the
21 embezzlement.

22 19. Respondent was advised of her Miranda rights, waived them, and provided a
23 statement to the officer. In the statement, Respondent admitted to the embezzlement of gift cards
24 from the Albertson's pharmacy. Respondent admitted that she would generate gift cards for
25 customers without a coupon and without the customer's knowledge. When the customer would
26 return to pick up the prescription, she would purposely leave the gift card in the prescription bag.
27 She would complete the transaction and give the prescription to the customer. When the
28 customer left, she would then retrieve the gift card from the prescription bag and place it in her

1 shirt or jacket pocket. Respondent further stated that she would only create one false gift card
2 transaction per day so the manager or other employees would not notice what she was doing.
3 Respondent stated that she spent all of the gift cards. Respondent stated that she did not know
4 why she did it; she was unable to provide the officer with any explanation.

5 20. Respondent was arrested at the conclusion of the interview and charged with a
6 violation of Penal Code section 503 (embezzlement over \$400.00), a felony.

7 **FIRST CAUSE FOR DISCIPLINE**

8 (February 29, 2008 Criminal Conviction for Embezzlement on or about January 22, 2008)

9 21. Respondent is subject to disciplinary action under Code sections 490, and 4301(l), in
10 that she was convicted of a crime substantially related to the duties, functions, and qualifications
11 of a pharmacy technician, as described in paragraphs 14 through 20, above.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct- Dishonest Act)

14 22. Respondent is subject to disciplinary action under Code section 4301(f) in that she
15 committed acts involving moral turpitude, dishonesty, deceit or corruption when she embezzled
16 \$500.00 from her employer and failed to provide customers with gift cards they were entitled to,
17 instead wrongfully withholding them for her own personal use, as described in paragraphs 14
18 through 20, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (Unprofessional Conduct- Conduct Warranting Denial of Licensure)

21 23. Respondent is subject to disciplinary action under Code section 4301(f) in that she
22 committed acts involving moral turpitude, dishonesty, deceit or corruption. Specifically, on or
23 about January 20, 2009, Respondent renewed her Pharmacy Technician Registration and failed to
24 disclose the criminal conviction detailed above, in paragraphs 14 through 20, on the renewal
25 application. Respondent marked "NO" to the question asking is she had been convicted of any
26 crime since the last renewal.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct- Conduct Warranting Denial of Licensure)

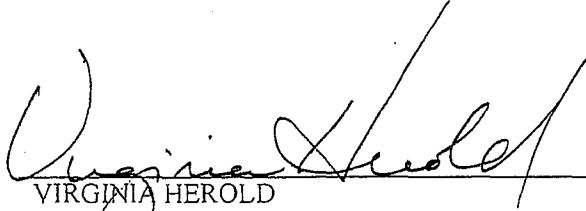
3 24. Respondent is subject to disciplinary action under Code section 4301(p), in that she
4 committed acts which, if she had committed before she were issued her Pharmacy Technician
5 Registration, would have warranted the denial of her application for licensure in that she
6 embezzled \$500.00 from her employer and failed to provide customers with gift cards they were
7 entitled to, instead wrongfully withholding them for her own personal use, as described in
8 paragraphs 14 through 20, above.

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Pharmacy issue a decision:

- 12 1. Revoking or suspending Original Pharmacy Technician Registration Number TCH
13 36174, issued to Respondent Carmen Gonzalez.
- 14 2. Ordering Respondent Carmen Gonzalez to pay the Board of Pharmacy the reasonable
15 costs of the investigation and enforcement of this case, pursuant to Business and Professions
16 Code section 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19
20 DATED: 2/3/10


21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

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